

### **REMARKS/ARGUMENTS**

The present application has been reviewed in light of the Office Action mailed February 9, 2005. Claims 1-32 are currently pending in the application. Claims 1, 11, 21, 22, 27 and 29 have been amended herein, and claim 32 has been added herein. Reconsideration of the present application, as amended, is respectfully requested.

The specification has been amended herein, in the manner indicated above, in order to correct minor informalities therein. It is respectfully submitted that no new matter has been added by this amendment to the specification.

FIGS. 14-17 have been amended herein in order to conform each of FIGS. 14-17 with the amendments made to the specification. A copy of sheet 5 of the figures including amended FIGS. 14-17 is submitted herewith. It is respectfully submitted that no new matter has been added by the amendments to FIGS. 14-17. Accordingly, the Examiner's approval of the proposed changes to FIGS. 14-17 is respectfully requested.

It is acknowledged that claims 5, 29 and 31 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

It is acknowledged that claims 22-26 have been objected to as containing minor informalities. Claim 22 has been amended herein in a manner which is believed to correct said minor informalities.

Claims 1, 2, 10-12, 21-23 and 27 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,627,421 to Symbas et al. It is respectfully submitted that claims 1, 11, 21 and 27, as amended herein, are allowable over Symbas et al.

It is respectfully submitted that Symbas et al. fails to teach and/or suggest amended independent claims 1 and 21. Claim 1 presently recites a device to be *independently* interposed between an exposed end of a sternal half of a longitudinally divided sternum and a blade of a surgical retractor, the device including, *inter alia*, an end wall having a size and a dimension to at least partially cover the exposed end of a sternal half, wherein the device is *independently placeable against the exposed end of the sternal half*.

Claim 21 presently recites a method of minimizing the effusion of blood from the exposed ends of a sternal half of a longitudinally divided sternum, formed during a sternotomy, the method including the steps of, *inter alia*, providing a pair of *independent* devices for stanching the effusion of blood from the exposed ends of the sternal halves; and *independently* placing a device against each exposed end of each sternal half, wherein the devices are disposed between the exposed end of each sternal half and a blade of a surgical retractor.

Rather Symbas et al. discloses a sternal retractor including a cross-bar 10 to which a pair of pivoting arms 12a and 12b are mounted. Each of the arms 12a and 12b are provided with blades 28a and 28b. Blades 28a and 28b are pivotally mounted on cotter pins 30a and 30b (shown in shadow lines in FIG. 3 of Symbas et al.) which engage the ears 32' and 32''. Since blades 28a and 28b are pivotally connected to arms 12a and 12b, blades 28a, 28b do not anticipate the pair of devices of claims 1 and 21 since the devices of claims 1 and 21 are independent of any other structure.

It is respectfully submitted that Symbas et al. fails to teach and/or suggest amended independent claims 11 and 27. Claim 11 presently recites a device for use with a retractor including at least one blade, wherein the device is used for stanching the effusion of blood from an exposed sternal half of a longitudinally divided sternum, formed during a sternotomy, the device including, *inter alia*, an end wall interconnecting upper and lower walls; wherein the upper wall, the lower wall and the end wall bound a space; and the upper and lower walls defining an opening through which an exposed end of a sternal half is receivable into the space of the device, ***wherein a respective blade of the retractor engages a surface of the device opposite the space of the device.***

Claim 27 presently recites in a sternotomy, the improvement includes the steps of, *inter alia*, providing a pair of caps for stanching the effusion of blood from exposed sternal halves of a sternum, each including an end wall interconnecting upper and lower walls; the upper and lower walls defining an opening through which the sternal half is receivable into the space of the cap, ***wherein a blade of a surgical retractor engages a surface of the device opposite the space of the device.***

Rather, as discussed above, Symbas et al. discloses a sternal retractor including a cross-bar 10 to which a pair of pivoting arms 12a, 12b are mounted and a blade 28a, 28b pivotally connected to a respective arm 12a, 12b thereof via respective cotter pins 30a, 30b (shown in shadow lines in FIG. 3 of Symbas et al.) which engage respective ears 32', 32'' of blades 28a, 28b. In operation, arms 12a, 12b of the retractor pull on ears 32', 32'' of respective blades 28a, 28b in order to perform the retraction. Since blades 28a, 28b are pivotally connected to arms 12a, 12b, and function to pull on blades 28a, 28b in order to perform the retraction, arms 12a,

12b do not engage a surface of the device which is opposite the space defined by the device to receive the sternal half therein, as substantially called for in claims 11 and 27.

Accordingly, in view of the amendments made to claims 1, 11, 21 and 27, it is respectfully submitted that the rejection of claims 1, 11, 21 and 27, as being anticipated by Symbas et al., has been overcome. Since claims 2 and 10 depend directly from claim 1 and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, it is respectfully submitted that claims 2 and 10 are also patentable over Symbas et al. Since claim 12 depends from claim 11 and contains all of the features of claim 11, for the reasons presented above regarding the patentability of claim 11, it is respectfully submitted that claim 12 is also patentable over Symbas et al. Since claims 22 and 23 depend directly or indirectly from claim 21 and contain all of the features of claim 21, for the reasons presented above regarding the patentability of claim 21, it is respectfully submitted that claims 22 and 23 are also patentable over Symbas et al.

Claims 1-4 and 10-12 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent D440,268 to Colon. It is respectfully submitted that claims 1-4 and 10-12, as amended herein, are allowable over Colon.

It is respectfully submitted that Colon is non-analogous to any pertinent prior art contemplated by one of skill in the art. Colon is a Design Patent specifically directed to structure to be fitted to an end of a skateboard. More specifically, the Colon Design Patent states that “the invention relates to a fitting which is to be attached to the front and/or rear end of a skateboard platform to facilitate the performance of certain maneuvers by a skateboard user.

In contrast, Applicants claims invention is a device to be *independently* interposed between an exposed end of a sternal half of a longitudinally divided sternum and a blade of a surgical retractor, the device including, *inter alia*, an end wall having a size and a dimension to at least partially cover the exposed end of a sternal half, wherein the device is *independently placeable against the exposed end of the sternal half*.

Applicants respectfully submit that there can be no possible anticipation of a surgical sternum cover, as called for in the claims of the present application, by a fitting for a skateboard platform, as called for in the Colon Design Patent.

It is respectfully submitted that one having skill in the art (e.g., a surgeon or the like) would never have reason to review skateboard art for a device to engage a severed sternum and retract said severed sternum, as recited in the claims of the present application.

There are two criteria which are relevant when determining whether a prior art reference is analogous:

1. Whether the art is from the same field of endeavor, regardless of the problem addressed, and
2. if the art is not within the same field of endeavor, whether it is still reasonably pertinent to the particular problem to be solved. In re Clay, 966 F.2d 656, 658-659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

In resolving the question of whether the reference is analogous, it is presumed that the inventor has full knowledge of all the prior art within the field of his endeavor. With regard to art outside the inventor's field of endeavor, however, the inventor is only presumed to have knowledge

of those arts *reasonably pertinent* to the particular problem with which the inventor was involved. A reference is *reasonably pertinent* if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to that of the inventor's attention in considering his problem.

The instant fact presents a strong case that the Colon Design Patent is non-analogous art to the device of the present application. Colon is not a device of the same type as Applicant's. Colon relates to a fitting for skate boards which would not logically fall into the same field of endeavor as a device for minimizing the loss of blood through a severed sternum during cardiac and/or thoracic surgery. Moreover, Colon is cited for the proposition that a molded plastic device comprising an end wall interconnecting an upper wall and a lower wall extending orthogonally from the end wall anticipates Applicant's device. However, a person designing devices for stanching the effusion of blood from the exposed end of a sternal half *would not* have reason to *know, look or even consider* a design for a fitting for a skateboard in an unrelated field.

In essence, Colon is *not* reasonably pertinent because it is from a different field from that of the Applicant's endeavor, and, logically, would not have commended itself to that of the Applicant's attention when considering his/her device. Therefore, it is respectfully submitted that there is nothing in Colon to *suggest the desirability, thus the obviousness*, to a person having ordinary skill in the art of stanching devices to design a device in the cited fashion. Clearly, stanching devices have nothing to do with fittings for skateboards as presently proposed.

Notwithstanding the fact that Colon is non-analogous art, Colon fails to teach and/or suggest placement of the "fitting", as identified therein, against the exposed end of a sternal half, as substantially called for in claims 1, 11, 21 and 27.

Claims 13-18, 24-26 and 28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,627,421 to Symbas et al. It is respectfully submitted that claims 13-18, 24-26 and 28 are allowable over Symbas et al.

Since claims 13-18 depend directly or indirectly from claim 11 and contain all of the features of claim 11, for the reasons presented above regarding the patentability of claim 11, it is respectfully submitted that claims 13-18 are also patentable over Symbas et al. Since claims 24-26 depend from claim 21 and contain all of the features of claim 21, for the reasons presented above regarding the patentability of claim 21, it is respectfully submitted that claims 24-26 are also patentable over Symbas et al. Since claim 28 depends directly from claim 27 and contains all of the features of claim 27, for the reasons presented above regarding the patentability of claim 27, it is respectfully submitted that claim 28 is also patentable over Symbas et al.

Claims 13-20 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent D440,268 to Colon. It is respectfully submitted that claims 13-20 are allowable over Colon.

Claims 6-9 and 30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,627,421 to Symbas et al. in view of U.S. Patent 2,238,563 to Jacques. It is respectfully submitted that claims 6-9 and 30 are allowable over Symbas et al. in view of Jacques.

Jacques is directed to an embalming instrument and fails to remedy the deficiencies of Symbas et al. Accordingly, since claims 6-9 depend directly or indirectly from claim 1 and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, it is respectfully submitted that claims 6-9 are also patentable over Symbas et al. in

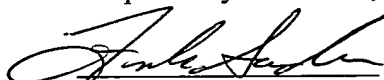
view of Jacques. Additionally, since claim 30 depends indirectly from claim 27 and contains all of the features of claim 27, for the reasons presented above regarding the patentability of claim 27, it is respectfully submitted that claim 30 is also patentable over Symbas et al. in view of Jacques.

In view of the amendments made to the specification, drawings and claims, and in view of the remarks presented above, it is respectfully submitted that the rejections of the claims in the present Office Action has been overcome or rendered moot. Accordingly, it is respectfully submitted that the present application is allowable.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicants' undersigned representative at the number indicated below.

An early and favorable response is earnestly solicited.

Respectfully submitted,



Francesco Sardone  
Registration No. 47,918  
Attorney for Applicant

***Carter, De Luca, Farrell & Schmidt, LLP***  
445 Broad Hollow Rd., Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax.: (631) 501-3526



**Amendments to the Drawings:**

The attached sheet of drawings includes changes to FIGS. 14-17. This sheet, which includes FIGS. 14-17, replaces the original sheet including FIGS. 14-17.

Attachment: Replacement Sheet